88-1212

Supreme Court, U.S.
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No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1988

MARK ROBERT HOFFMAN
Petitioner,

-vs-

PEOPLE OF THE CITY OF TROY, MICHIGAN
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

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STATEMENT OF QUESTION PRESENTED

I.

May A Newspaper Photographer, Taking Photographs At The Scene Of An Arrest, Be Convicted Of And Sentenced To A Period Of Incarceration For Violating A Municipal Ordinance Which Is Repugnant To The Constitution Because It Prohibits The Obstruction Or Hinderance Of A Police Officer Without Regard To Intent Or Knowledge, Gives The Municipality's Police Department Unfettered Enforcement Discretion And Which Is Similar To The Police Obstruction Ordinance Struck Down By This Court In *City Of Houston, Texas v. Hill,* 482 U.S. 451 (1987)?

LIST OF PARTIES

Petitioner

Mark Robert Hoffman

Respondent

People of the City of Troy, Michigan

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IN THE
SUPREME COURT
OF THE UNITED STATES

OCTOBER TERM 1988

No.

MARK ROBERT HOFFMAN,
Petitioner,

v.

PEOPLE OF THE CITY OF TROY, MICHIGAN,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

Petitioner Mark Robert Hoffman respectfully prays that a writ of certiorari issue to review the judgment of the Michigan Supreme Court entered in this case on November 22, 1988.

OPINIONS AND ORDERS BELOW

On December 12, 1986, Petitioner, Mark Robert Hoffman, was convicted in 52-4 District Court in the State of Michigan of reckless driving and obstructing and resisting police officers. On the same day, Hoffman was sentenced to five days in jail and a total of $400.00 in costs and fines on both counts. Petitioner's Motion to Dismiss was denied by the Court on September 11, 1986, App. at 1a-4a.

On October 2, 1987, the Oakland County Circuit Court issued an Order affirming the conviction for reasons stated on the record of September 18, 1987. App. at 5a.

On October 27, 1987, the Circuit Court issued an Order Denying Defendant's Motion for Reconsideration. App. at 7a.

On May 20, 1988, the Michigan Court of Appeals entered an Order Denying Defendant's Application for Leave to Appeal in which one member of the three judge panel dissented. App. at 9a.

On November 22, 1988, the Michigan Supreme Court entered an Order Denying Hoffman's Application for Leave to Appeal with two justices dissenting. App. at 10a.

JURISDICTION

The judgment of the Circuit Court for the County of Oakland was entered on October 2, 1987, affirming Hoffman's conviction dated December 12, 1986. The Circuit Court denied a timely Motion for Reconsideration on October 27, 1987. On May 20, 1988 the Michigan Court of Appeals denied Hoffman's timely Application for Leave to Appeal. Thereafter, on November 22, 1988, the Michigan Supreme Court, the court of last resort in the State of Michigan, denied Hoffman's timely Application for Leave to Appeal. This Petition For Writ of Certiorari was filed within 60 days of the date of that Order. Hoffman invokes this Court's jurisdiction under 28 U.S.C. 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved in this case are: the Fourteenth Amendment, Section 1, to the United States Constitution, which states:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law . . ."

and the First Amendment to the United States Constitution, which states in relevant part:

> "Congress shall make no law . . . abridging the freedom of speech, or the press . . ."

STATEMENT OF THE CASE

Petitioner, Mark Hoffman, a newspaper photographer, was convicted under a municipal criminal ordinance (App. at 11a) that makes it illegal to "hinder" or "obstruct" a police officer in the course of his duties without regard to knowledge or intent. Hoffman's arrest and conviction arose out of an incident in which Hoffman had taken pictures of the scene of an arrest after following police as they pursued a fleeing suspect. The importance of this case lays in the fact that the "hinderance" statute at issue has been used to chill protected First Amendment rights and deprive Hoffman of his liberty based on the personal predilections of the police. Equally as important is the fact that, if this ordinance is allowed to remain in effect as is, the liberty of other citizens will undoubtedly also be compromised. Moreover, the ordinance in issue is clearly repugnant to the Constitution and is directly contrary to this Court's recent decision striking down a similarly-worded police "obstruction" ordinance in *City of Houston, Texas v. Hill,* 482 U.S. 451, 107 S.Ct. 2502, 96 L.Ed.2d 398 (1987).

In April 1986, Hoffman began working in Detroit, Michigan as a summer intern photographer for the Detroit News, one of the country's largest daily newspapers. As a newspaper photographer, Hoffman was dispatched throughout the metropolitan Detroit area to photograph various news stories.

On May 6, 1986, at approximately 4 p.m., Hoffman was driving home on Interstate Highway 75. Having heard on his radio that a police car in the vicinity had been rammed by and was in the pursuit of another vehicle, Hoffman pulled on to the shoulder of the road. He waited on the shoulder until he observed a state police car following another vehicle. He then proceeded to follow the police officer for approximately 11 miles until the traffic had been stopped by police. This roadblock forced the suspect's vehicle, as well as the state police officer's vehicle, to eventually come to a halt.

Hoffman also brought his vehicle to a stop and stepped out. As the photographs themselves bear out, Hoffman was at least ten

feet from the pursued vehicle as he photographed the officers removing the suspect from the pursued vehicle and placing him under arrest face down on the pavement. *See* App. p. 12a-14a.

Seconds later, as the individual from the pursued car was being placed under arrest, one of the police officers directed Hoffman to return to his vehicle and Hoffman immediately complied. One of the officers at the scene, however, contended that Hoffman was in his line of fire and initially ignored his order to return to his vehicle.

After returning to his vehicle, Hoffman was placed under arrest, ticketed for reckless driving and for obstructing and resisting a police officer, and taken to the Troy Police Department.

A complaint was later filed which charged Hoffman in Count I with operating a motor vehicle in a reckless manner, and in Count II with obstructing and resisting police officers in violation of city ordinances. Count II was based on a city of Troy ordinance which provides that "no person shall obstruct, resist, hinder, or oppose any member of the police force or any peace officer in the discharge of his duties as such." During his trial, Hoffman argued that the ordinance was invalid because it was overbroad and vague. A motion to dismiss on these grounds was rejected by the trial court prior to the trial. *See* App. p. 1a-4a.

Following a jury trial, Hoffman was convicted on both counts. Hoffman was sentenced to five days in jail and a total of $400 in costs and fines on both counts.

Consequently, Hoffman remains convicted of an ordinance which fails to provide fair notice of the conduct or speech prohibited, gives the police nearly unbridled discretion to decide what is or is not unlawful conduct without any showing of scienter and which inhibits conduct protected by the First Amendment. Allowing such an ordinance to stand has far-reaching negative implications not only for members of the media, but for all citizens who come into contact with local law enforcement officers in municipalities, like Troy, which have this type of "catch all" criminal provision.

REASONS FOR GRANTING THE WRIT

THE CONVICTION OF A NEWSPAPER PHOTOGRAPHER, FOR TAKING PICTURES AT AN ARREST SCENE, ON THE BASIS OF AN UNCONSTITUTIONALLY OVERBROAD AND VAGUE LOCAL ORDINANCE, PRESENTS AN ISSUE OF IMPERATIVE PUBLIC IMPORTANCE AND CONFLICTS WITH A PRIOR DECISION OF THE UNITED STATES SUPREME COURT

This case presents an issue of major importance to the general public because it focuses upon an ordinance which has been — and will continue to be — used to cripple and impugn two fundamental rights: the right to not be deprived of one's liberty absent due process of law, and those rights guaranteed by the First Amendment. Hoffman was convicted of hindering and obstructing a police officer in violation of a local ordinance, which provides in full that "no person shall obstruct, resist, hinder, or oppose any member of the public force or any peace officer in the discharge of his duties as such." App. p. 11a. As shall be illustrated below, this ordinance is repugnant to the Constitution because it is both substantially overbroad and vague, and thus should be invalidated as unconstitutional. Hoffman's conviction under this ordinance, unless reversed, will result in an unjust and illegal deprivation of his freedom without due process of law — a blatant violation of the rights secured to the citizens of this country by the Constitution.

The importance of a determination of the validity of his ordinance extends far beyond this particular case, however. Should Hoffman's conviction stand and the ordinance be validated, not only will Hoffman be deprived of his liberty, but the general public will face the constant risk of losing their liberty on the whim of local police officers patrolling cities and municipalities, like Troy, which have similar ordinances. The Constitution was designed specifically to prevent police officers from abusing the authority vested in them by the general population. Undoubtedly concerned about the far-reaching negative effects of such

ordinances, this Court has, as it has consistently done in the past, recently struck down a similar local ordinance which gave the police free rein in deciding who and what type of activity "opposed" and "interrupted" them enough to warrant an arrest. *City of Houston, Texas, Texas v. Hill, supra.* Yet despite the clear teachings of *Hill* and similar cases, municipalities like Troy continue to use statutes and ordinances like the one at issue to suppress fundamental rights. Because the ordinance in this case similarly gives the police free rein to decide when they have been unlawfully "opposed" or "hindered," because fundamental rights of Hoffman and the general public are at stake, and because the Michigan courts have essentially ignored the prior applicable decision of this Court, the petition should be granted so that the ordinance at issue can be invalidated and Hoffman's improper conviction under it reversed.[1]

A. The Ordinance Is Unconstitutionally Broad Because It Places Unfettered Enforcement Discretion In The Hands Of The Police And Sweeps Within Its Scope A Substantial Amount Of Constitutionally Protected Conduct And Speech.

Because the Troy local ordinance on its face punishes as criminal any conduct of an individual which "hinders" or "obstructs" a Troy police officer in the course of his duties, *without regard to intent or knowledge,* an individual can arbitrarily be arrested, charged and convicted for completely innocent conduct. In fact, construing the ordinance literally, the Troy police could arrest anyone for any conduct which they subjectively perceive to be interfering with their duties in any way. Thus, for example, a driver of an automobile involved in a traffic jam which somehow hinders or obstructs a police officer or anyone who merely verbally criticizes an officer could potentially be found to have violated the

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[1]Petitioner reserves the right to argue the erroneousness of the lower courts' decisions on other issues, including a Miranda violation, if the petition is granted, but does not include these discrete issues as among the reasons for the granting of certiorari.

ordinance. In essence, the ordinance is so broadly written that, under it, police may selectively decide when to invoke it and against whom to enforce it. The ordinance clearly and impermissibly places unfettered enforcement discretion in the hands of the Troy police and hence presents a substantial likelihood that the ordinance will deter constitutionally protected conduct. The ordinance is thus substantially and unconstitutionally overbroad.

The unconstitutionality of the Troy ordinance is positively confirmed by the Court's recent decision in *Hill*. In that case, this Court held that a Houston ordinance, which was substantially similar to the Troy ordinance, was unconstitutionally overbroad. *Hill*, 107 S.Ct. at 2512. The Houston ordinance made it a misdemeanor, without reference to intent, "for any person to assault, strike, or in any manner oppose, molest, abuse, or interrupt any policeman in the execution of his duty." *Id.* at 2506, quoting Houston Municipal Code §34-11(a) (1984). Hill was convicted under this ordinance after shouting "why don't you pick on somebody your own size" to police officers who were speaking to another individual.[2]

Justice Brennan stated that the test to be applied in an overbreadth challenge to the facial validity of a law is "whether the enactment reaches a substantial amount of constitutionally protected conduct." *Id.* at 2058, citing *New York v. Feber*, 458 U.S. 747 (1982) and *Broadrick v. Oklahoma*, 413 U.S. 601 (1973). The Court stated further that statutes which do have the potential for making unlawful a substantial amount of constitutionally protected conduct will be held facially invalid even if they also have legitimate applications. *Id.* Finally, Justice Brennan noted that criminal statutes must be scrutinized with particular care. *Id.*, citing *Winters v. New York*, 333 U.S. 507 (1948).

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[2]According to the factual statement in the *Hill* decision, the Petitioner did nothing more than make the "pick on somebody your own size" comment twice to the police and admit in response to a question from those officers that he was interrupting them. It should also be noted that the individual to whom the police were originally speaking was not arrested.

In applying these tests and finding the Houston ordinance to be substantially and unconstitutionally overbroad, the Court agreed with the lower court's finding that there was "a realistic danger of, and a substantial potential for, the unconstitutional application of the ordinance," *Hill v. City of Houston, Texas,* 789 F.2d 1103, 1110 (5th Cir. 1986), and held that the law impermissibly provided the police "with unfettered discretion to arrest individuals for words or conduct that [simply] annoy or offend them." *City of Houston, Texas v. Hill,* 107 S.Ct. at 2511. In the majority opinion, Justice Brennan reasoned:

> The ordinance's plain language is admittedly violated scores of times daily, yet only some individuals those chosen by the police in their unguided discretion — are arrested. Far from providing the 'breathing space' that 'First Amendment freedoms need . . . to survive,' the ordinance is susceptible of regular application to protected expression.

Id. at 2512 (citations omitted). Thus, the Court concluded that the "unguided discretion" afforded to police to enforce the ordinance had a real and substantial chilling effect on First Amendment freedoms and as such the ordinance was found invalid. *Id.*

Applying the analysis presented in *Hill* to the instant case, it is clear that the Troy ordinance should similarly be found to be substantially overbroad and should be invalidated. The language and applications of the two statutes are virtually indistinguishable. Like the invalid Houston ordinance, the Troy ordinance "sets a net large enough to catch all possible offenders." *United States v. Reese,* 92 U.S. (2 OTTO) 214 (1876), and thus leaves to the unfettered discretion of the police the authority to arbitrarily arrest anyone subjectively perceived as disturbing, abusive or annoying, regardless of intent or the giving of a warning. Like the invalid Houston ordinance, the Troy ordinance is not limited to "fighting words," *see, e.g., Chaplinsky v. New Hampshire,* 315 U.S. 568 (1942), or other conduct and speech which threatens immediate danger to the police or to legitimate law enforcement endeavors, but, rather, sweeps within its scope a substantial amount of constitutionally protected conduct and speech and thus

presents a real likelihood of chilling First Amendment activity. Rather than following *Hill,* the analysis adopted by the Michigan courts below erroneously disregards the teachings of this Supreme Court decision.

Hoffman's conduct and his arrest illustrate exactly the kind of overbroad application of the ordinance as feared by the *Hill* Court. Hoffman, a newspaper photographer, attempted to photograph the scene of an arrest for publication in his newspaper. Unquestionably, his intent was to photograph, not prevent, the arrest. The police subjectively decided that his activities were annoying and thus invoked the Troy ordinance to place him under arrest and to confiscate his film.[3] This scenario vividly demonstrates the real potential provided by the overbroad Troy ordinance for unconstitutional suppression of conduct protected by the First Amendment of our Constitution. The value of a free press, to serve as the eyes and ears of the public, is beyond dispute; this country recognizes and fiercely protects that important value. Yet it is not difficult to foresee this ordinance and others like it being used against other members of the media in the future to prevent them from carrying out their right to gather the news. Such a scenario should not be permitted to occur in our country which is based on protecting the fundamental precepts of freedom of the press and freedom of expression. Hence, in order to preserve the precious liberties which are central to our system of government, overbroad ordinances such as the Troy ordinance at issue which provide the police with unlimited enforcement powers and thus substantially restrict important First Amendment freedoms, should be invalidated.

By their summary denials of leave to appeal, the Michigan courts have turned their respective backs on this fundamental constitutional principle. Petitioner now requests that this Court

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[3]Interestingly, his photograph of the arresting officers which appeared on the front page of the newspaper revealed that one of the officers covering the arrest had erred by leaving his weapon (a shotgun) unloaded. This caused embarrassment to the police and conceivably may have motivated the prosecution.

grant certiorari in order to right a wrong so repugnant to prior holdings of this Court.

B. The Ordinance Is Unconstitutionally Vague Because It Does Not Sufficiently Inform Citizens As To What Conduct Is Proscribed And Provides The Police With Unrestrained Delegations Of Power.

It is beyond question that, as a matter of due process, a law is void on its face if it is so vague that persons "of common intelligence must necessarily guess at its meaning and differ as to its application." *Connally v. General Construction Co.*, 269 U.S. 385, 391 (1926). More specifically, in the criminal context, the void-for-vagueness doctrine requires that a penal statute define the criminal offense with sufficient definiteness that ordinary people can understand what conduct is prohibited and it must define the offense in a manner that does not encourage arbitrary and discriminatory enforcement. *Kolender v. Lawson*, 461 U.S. 352, 357 (1983). The degree of specificity required in criminal statutes is greater than that necessary for civil statutes because the consequences of vagueness are more severe. *Winters v. New York*, 333 U.S. 507, 515 (1948).

Because of the important freedoms at stake in a criminal action, this Court has consistently accepted cases involving vague statutes and overturned convictions based on them. For example, in *Papachristou v. City of Jacksonville*, 405 U.S. 156 (1972), the Court invalidated a Florida vagrancy statute which employed "archaic language" in its definition of vagrancy and failed to provide a scienter requirement. The Court held that a legislature must not state its proscriptions in terms so indefinite that the line between innocent and condemned conduct becomes a matter of guesswork.

Not only are the terms "obstruct," "resist," "hinder" and "oppose" not given any specific narrowing definition or construction by either the legislature or the courts; but, perhaps more importantly, the ordinance fails to provide any requirement of mental intent or "mens rea" on the part of the individual to

impose liability upon him. This Court has repeatedly recognized that "a scienter requirement may mitigate a law's vagueness, especially with respect to the adequacy of notice to the complainant that his conduct is proscribed . . ." *Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 U.S. 489, 499 (1982). *See e.g., Screws v. United States,* 325 U.S. 91, 101-102 (1945) (A scienter requirement relieves the statute "of the objection that it punishes without warning an offense of which the accused was unaware.") Without such a requirement, individuals — like Hoffman — must necessarily guess at what conduct is to be considered blameworthy and what conduct is innocent. The ordinance under no conceivable reading gave Hoffman fair notice that his conduct of approaching the scene of an arrest and taking pictures of that arrest was prohibited. As stated in *Colautti v. Franklin,* 439 U.S. 379 (1978): "The Court has long recognized that the constitutionality of a vague statutory standard is closely related to whether that standard incorporates a requirement of *mens rea.*" And, in a well-known passage from *Morissette v. U.S.,* 342 U.S. 246 at 250, 251 (1952), Mr. Justice Jackson writing for the court observed:

> The contention that an injury can amount to a crime only when inflicted by intention is no provincial or transient notion. It is as universal and persistent in mature systems of law as belief in freedom of the human will and a consequent ability and duty of the normal individual to choose between good and evil. A relation between some mental element and punishment for a harmful act is almost as instinctive as the child's familiar exculpatory 'But I didn't mean to,' and has afforded the rational basis for a tardy and unfinished substitution of deterrence and reformation in place of retaliation and vengeance as the motivation for public prosecution. (Citations omitted).

The conviction of Hoffman under this ordinance is even more outrageous — and is in fact extremely puzzling — in light of the Michigan statute, M.C.L. 750.479, which provides in pertinent part:

> . . . any person who shall *knowingly and willfully* obstruct, resist, or oppose any sheriff . . . shall be guilty of a misdemeanor . . . (emphasis supplied)

Whereas the state law on its face requires knowledge and willfulness, the Troy ordinance clearly does not. MCL 750.479 makes clear that it is the policy of the State of Michigan to require a scienter element in this area of criminal behavior. Not only, then, does this ordinance fly in the face of this Court's holding in *Hill*, but it also blatantly ignores the guiding principles laid out by the legislature of the State of Michigan. Compounding this problem is the fact that the Michigan courts below simply ignored the obvious "discrepancy" between the ordinance and established constitutional law. Thus, the ordinance prohibits what the statute permits (namely, violation without scienter), and, in so doing, both renders itself unconstitutionally vague and contravenes the expressed policy of the state.

As noted above, an ordinance must also satisfy the second element of the vagueness analysis: the adequacy of the enforcement standards. Due process requires that legislation state reasonably clear guidelines for law enforcement officials, juries and courts to follow in discharging their responsibility of identifying and evaluating allegedly illegal conduct. *Kolender v. Lawson*, 481 U.S. at 357-358; *Smith v. Goguen*, 415 U.S. 566, 574-575 (1974). As it is currently drafted, the ordinance authorizes law enforcement officers to arrest anyone whenever the officer arbitrarily perceives that individual to be an impediment to his duties, without regard to whether the individual has intent to so impede the officer. Further, the vague and imprecise terms of the ordinance invite law enforcement officials to themselves define what conduct will be considered unlawful and what, if any, intent will be required. Thus, in effect, the lack of an intent requirement together with the imprecise terms of the ordinance provide law enforcement officials with unrestricted delegations of power. As this Court has stated:

> An ordinance is void for vagueness if it is in an unrestricted delegation of power, which in practice leaves the definition of

its terms to law enforcement officers, and thereby invites arbitrary, discriminatory, and overzealous enforcement.

Gregory v City of Chicago, 394 U.S. 111 at 117 (1969) (Black, J., concurring). Under this ordinance, law enforcement officers are entirely free to decide what type of conduct and what type of language violates the ordinance. As this Court noted in *Kolender,* criminal statutes that fail to provide minimal guidelines may permit "a standardless sweep [that] allows policemen, prosecutors and juries to pursue their personal predilections." 461 U.S. at 358, quoting *Smith v. Goguen, supra.*

Finally, it must be noted that vague statutes which impinge upon First Amendment Rights or have the potential of "chilling" First Amendment activities must be particularly closely scrutinized. *See, Rose v. Locke,* 423 U.S. 48 (1975); *NAACP v. Button,* 371 U.S. 415 (1963); *Smith v. Goguen, supra.*

In the present case, the Troy ordinance implicitly impinged upon First Amendment activity. Indeed, First Amendment concerns are unquestionably invoked where Hoffman, a newspaper photographer, took photographs of the scene of an arrest and was himself arrested for such protected activity. In the interests of justice and of fundamental constitutional principles, this court must closely scrutinize the Troy ordinance for its vagueness.

CONCLUSION

The overriding importance of personal liberty and First Amendment rights represented in these facts demonstrates that this case is worthy of Supreme Court review to invalidate a criminal ordinance which does not sufficiently inform the general public as to what conduct is prescribed, which has no scienter requirement and which conflicts with prior Supreme Court authority. For these reasons, Hoffman requests that a writ of certiorari be issued.

Respectfully submitted,

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Dated: January 20, 1989

APPENDIX

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Defendant's Exhibit C 12a

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Defendant's Exhibit A 14a

Ruling of the Court

STATE OF MICHIGAN
52-4 JUDICIAL DISTRICT COURT
(OAKLAND COUNTY)

PEOPLE OF THE CITY OF TROY,
Plaintiff Case No. 86-001956 CT 1

-vs-

MARK ROBERT HOFFMAN,
Defendant

RULING OF THE COURT

BEFORE THE HON. BRISTOL E. HUNTER,
DISTRICT JUDGE
Troy, Michigan — Thursday, September 11, 1986

APPEARANCES:

For the People: LESLIE S. GEDDIS P-35307
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For the Defendant: None present at this hearing

RECORDED BY: Marilyn C. Wojczan CER 0801
Certified Electronic Recorder

Ruling of the Court

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WITNESSES:
None.

EXHIBITS:
None.

Ruling of the Court

(3)

Thursday, September 11, 1986, at about 10:31 a.m.

Troy, Michigan

THE COURT: Ready?

MS. GEDDIS: Yes, Your Honor.

THE COURT: On the matter of the People versus Mark Robert Hoffman, the Court heard argument this morning from counsel for the Defendant, Mr. Lavoie, and counsel for the People, Miss Geddis, and I've had a . . . a chance to look at the two statutes which are involved.

It's the argument of Mr. Lavoie, on behalf of Defendant, that the ordinance under which Mr. Hoffman is charged is overly broad, and does not . . . is fatally defective because it specifically does not require the proving of an intent to hinder and obstruct. It is under the disorderly ordinance, and it's a simple common law language of hindering and obstructing a police officer in the performance of his duty.

The Court is persuaded that this does not require specific showing of . . . or, rather, a . . . a showing of specific intent, and that the general intent can be inferred from the actions of the person.

The statute cited by Mr. Lavoie, the State statute, is different in nature, in that it requires that intent to commit an act of hindering and obstructing is performed by the Defendant, and it carries a penalty greater than the city ordinance. It's a two-year, one . . . a two-year, thousand dollar, I believe, misdemeanor.

And I don't think that there's anything under the law that requires the ordinance to conform to that statute, and they materially differ.

The Court's gonna deny the motion to dismiss on the ground that it's overly broad. I don't think that it is overly broad. I think

it states specifically what the People may charge and prove under the ordinance. Accordingly, the motion to dismiss is denied.

MS. GEDDIS: Thank you, Your Honor.

THE COURT: You probably want to include that in your transcript that he's ordered.

COURT RECORDER: He hasn't ordered it yet.

THE COURT: Oh. Okay. The matter, then, will be set down on the jury trial docket.

(At about 10:35 a.m., proceeding concluded)

CERTIFICATION BY COURT RECORDER

STATE OF MICHIGAN }
COUNTY OF OAKLAND } ss.

I certify that this transcript, consisting of four (4) pages, is a complete, true, and correct transcript of an excerpt of the proceedings taken in this case on September 11, 1986, (5) to-wit: Ruling of the Court, only.

DATED: October 21, 1986.

(s) MARILYN C. WOJCZAN CER 0801
Certified Electronic Recorder
52-4 District Court
500 West Big Beaver Road
Troy, MI 48084

Order

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

PEOPLE OF THE CITY OF TROY,
Plaintiff-Appellee, Case No. 86-DA3734 AR

v

MARK ROBERT HOFFMAN,
Defendant-Appellant.

LESLIE S. GEDDIS (P35307)
Attorney for Plaintiff-Appellee
500 W. Big Beaver Road
Troy, Michigan 48084
(313) 524-3320

MICHAEL J. LAVOIE (P32584)
Attorney for Defendant-Appellant
Butzel, Long, Gust, Klein & Van Zile
1881 First National Building
Detroit, Michigan 48226
(313) 963-8142

ORDER

At a session of Court held in the Courthouse in the City of Pontiac, Oakland County, Michigan, on: Oct. 2, 1987

PRESENT: HONORABLE FRED M. MESTER,
CIRCUIT JUDGE

This matter having come before the Court on an appeal of the Defendant from a jury conviction in 52/4 District Court and the Court having received briefs, heard oral argument of the

Order

parties and the Court being otherwise fully advised in the premises;

IT IS HEREBY ORDERED that the Defendant's conviction in the 52/4 District Court on the charges of reckless driving and hindering, resisting or obstructing a police officer while in the performance of his duties are affirmed for the reasons stated on the record on September 18, 1987 and this matter is remanded to 52/4 District Court for execution of sentence.

(s) FRED M. MESTER
Circuit Judge

By (s) MARGARET BROOK
Deputy

Order

STATE OF MICHIGAN
IN THE CIRCUIT COURT
FOR THE COUNTY OF OAKLAND

PEOPLE OF THE CITY OF TROY,
Plaintiff-Appellee, Case No. 86-DA3734 AR

v

MARK ROBERT HOFFMAN,
Defendant-Appellant.

LESLIE S. GEDDIS (P35307)
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(313) 524-3320

MICHAEL J. LAVOIE (P32584)
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1881 First National Building
Detroit, Michigan 48226
(313) 963-8142

ORDER

At a session of Court held in the Courthouse in the City of Pontiac, Oakland County, Michigan, on: Oct. 27, 1987.

PRESENT: HONORABLE FRED M. MESTER,
CIRCUIT JUDGE

This matter having come before the Court on Appellant's Motion for Reconsideration and the Court having reviewed the Motion and Defendant's Brief, and the Court being otherwise fully advised in the premises;

Order

IT IS HEREBY ORDERED that Defendant's Motion for Reconsideration is denied and that this matter is remanded to 52/4 District Court for immediate sentencing.

(s) FRED M. MESTER
Circuit Court

By (s) SUSAN W
Deputy

Order

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE/CITY OF TROY

v

MARK ROBERT HOFFMAN

DAVID H. SAWYER
Presiding Judge
Gary R. McDonald
William B. Murphy*
Judges
Docket No. 104547
L.C. No. 86 DA7374 AR

ORDER

The Court orders that the application for leave to appeal is DENIED for lack of merit in the grounds presented.

---

*Judge Murphy dissents.

[SEAL] A true copy entered and certified by Ronald L. Dzierbicki, Chief Clerk, on May 20, 1988.

(s) RONALD L. DZIERBICKI
Chief Clerk

Order

STATE OF MICHIGAN
IN THE SUPREME COURT

Entered: November 22, 1988

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellee,

v

MARK ROBERT HOFFMAN,
Defendant-Appellant.

SC: 83483
COA: 104547
CC: 86-DA3734-AR
DC: 86-001956-CT

ORDER

On order of the Court, the application for leave to appeal is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court.

Levin and Archer, JJ., would remand the case to the Court of Appeals for consideration as on leave granted.

[SEAL] I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of Court.

November 22, 1988

(s) CORBIN R. DAVIS
Clerk

Troy City Ordinance, CH. 92 §9.72(29)

TROY CITY ORDINANCE, CH. 92 §9.72(29)

No person shall obstruct, resist, hinder, or oppose any member of the police force or any peace officer in the discharge of his duties as such.

Defendant's Exhibit C

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Defendant's Exhibit C

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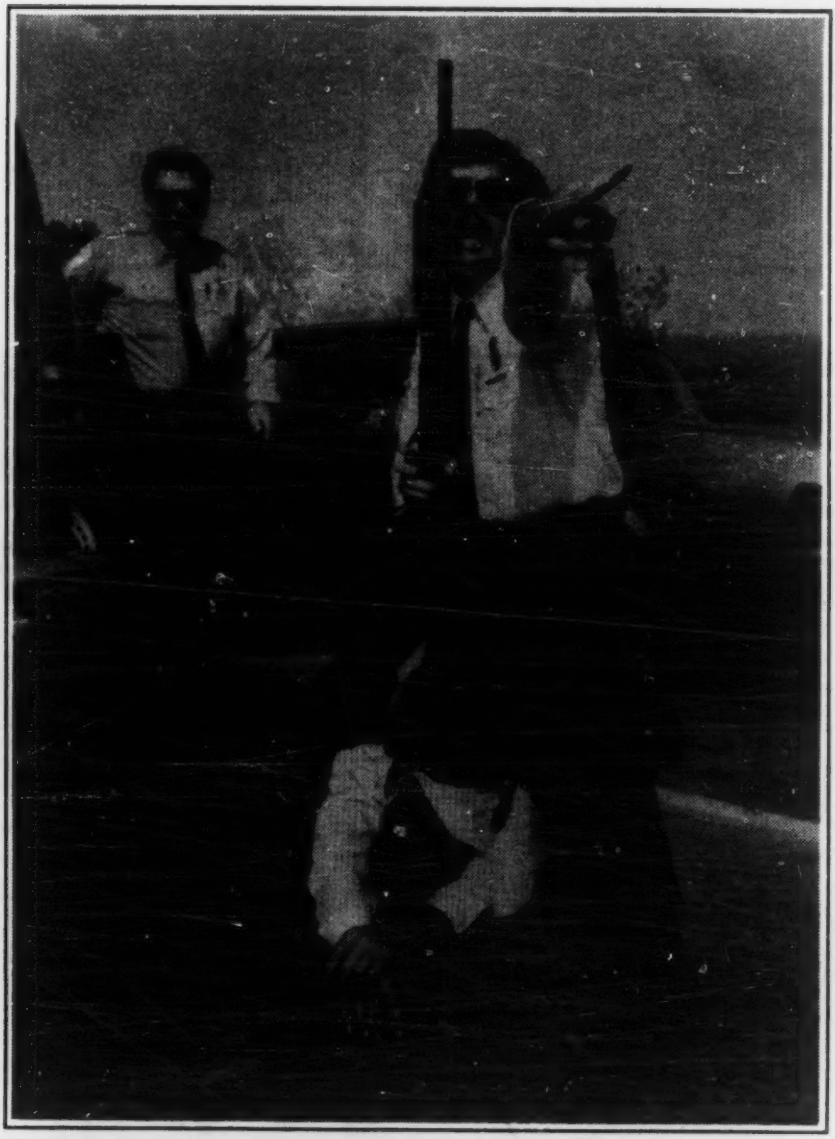
Defendant's Exhibit A



(2)

Supreme Court, U.S.
FILED
FEB 21 1989
JOSEPH F. SPANIOL, JR.
CLERK

No. 88-1212

IN THE
Supreme Court of the United States
OCTOBER TERM, 1988

MARK ROBERT HOFFMAN,
Petitioner,

v.

PEOPLE OF THE CITY OF TROY, MICHIGAN,
Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

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COUNTERSTATEMENT OF QUESTION PRESENTED

Whether conviction of a person who recklessly pursued a police car involved in a high speed chase to apprehend a felony suspect around a police blockade to the scene of the arrest where police officers have guns drawn and who jumps from his car, runs between the suspect and police officers with guns drawn in order to take photographs and who refuses police officer commands to leave the scene conflicts with this Court's decision in *City of Houston Texas v. Hill*, 482 U.S. 451 (1987)?

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1988

No. 88-1212

MARK ROBERT HOFFMAN,

Petitioner,

v.

PEOPLE OF THE CITY OF TROY, MICHIGAN,

Respondent.

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE MICHIGAN SUPREME COURT

COUNTERSTATEMENT OF THE CASE

Respondent, City of Troy, believes that Petitioner's statement of the case needs correction and supplementation. Petitioner's arrest and conviction did not arise out of an incident in which the Petitioner simply had taken pictures at the scene of an arrest after following police pursuing a fleeing suspect. This is not a First Amendment case. This is not a "verbal interruption" case nor can the ordinance at issue be legitimately construed as prohibiting verbal interruption. The ordinance

at issue simply does not conflict with this Court's decision in *City of Houston, Texas v. Hill*, 482 U.S. 451, 107 S.Ct. 2502, 96 L.Ed.2d 298 (1987).

After hearing on his police radio in his car that there was a high speed chase in progress on Interstate 75 during rush hour traffic involving a state trooper chasing a felony suspect, Petitioner pulled off the expressway onto the shoulder to wait for the chase to pass him. After the cars passed him, Petitioner joined the chase following right behind the state trooper's patrol car. Petitioner drove at speeds up to 80 mph and used all three lanes of the expressway, nearly having several accidents, in order to stay right behind the state trooper's patrol car. In order to stay in the chase, Petitioner drove his car onto the shoulder and the grassy median to get around a vehicle parked on the shoulder of the expressway. A Troy police car was parked to block the progress of the chase, but the felony suspect drove around the car pursued by the state trooper. Petitioner drove on the grassy median and the shoulder to evade the blockade and continued the chase. All traffic on Interstate 75 had been stopped by Troy police. Traffic that was stopped filled all three lanes of the expressway. Troy police had the shoulders blocked with their patrol cars. The felony suspect finally came to a stop at a roadblock, but he did not get out of his car. The Petitioner was immediately behind the state trooper's car throughout this chase. After the suspect came to a stop, the state trooper stopped and jumped out of his car, drew his gun and pointed it toward the suspect. Troy police at the scene also had guns drawn and pointed at the suspect. Petitioner who had stopped and jumped out of his car, ran up to the suspect's car directly in front of the state trooper's line of fire. Petitioner was as close as one and a half feet from the suspect. Troy police began yelling at Petitioner to get out of the way, but Petitioner refused. Petitioner was not only in the direct line of fire of the police, he

also blocked a Troy police officer's view of the suspect. Petitioner refused police officer commands to leave the scene in order to snap photographs. Although Petitioner disputes some of these facts, the jury clearly did not believe him and convicted him of reckless driving and obstructing a police officer in the discharge of his duties.

The Petition also omits that the Petitioner was charged by Respondent with "knowingly and wilfully" violating the ordinance. The trial court also gave a limiting construction of the ordinance by instructing the jury that they had to find that the Petitioner must have intended to obstruct the police officer in the discharge of his duties.

The City of Troy acted within constitutional bounds in prohibiting the obstruction and hindrance of the police officers in the performance of their duties in this case.

Most municipalities as well as state governments have ordinances or laws similar in substance to Troy's ordinance at issue. If the Troy ordinance is found unconstitutional, these ordinances will be subjected to legal challenge. This would impair the ability of local governments to adequately provide for the safety of public and law enforcement personnel. For instance, a reporter from a local radio station who was in a helicopter over the chase in this case, saw the chase come to a stop and saw Petitioner run right into the middle of the police while police were attempting to apprehend the suspect, and testified that if somebody had been shooting down there, the Petitioner would have been shot. App. p. 1a.

The Troy ordinance does not deter or prevent conduct protected under the First Amendment. Expression of free ideas is not chilled by the ordinance. The ordinance simply prohibits criminal conduct such as that engaged in by Petitioner which threatens the safety of police officers and civilians. The con-

tention that the ordinance is overbroad is completely without merit. Even assuming that the ordinance is overbroad, a reasonable limiting construction was applied in this case which obviates the need to invalidate the ordinance for overbreadth.

REASONS FOR DENYING THE WRIT

THE CONVICTION OF A PERSON FOR RECKLESSLY PURSUING A POLICE CAR INVOLVED IN A HIGH SPEED CHASE TO APPREHEND A FELONY SUSPECT AROUND A POLICE BLOCKADE TO THE SCENE OF THE ARREST AND WHO THEN JUMPS FROM HIS CAR AND RUNS BETWEEN THE SUSPECT AND POLICE OFFICERS WITH DRAWN GUNS IN ORDER TO SNAP PHOTOGRAPHS AND WHO REFUSES POLICE OFFICER COMMANDS TO LEAVE THE SCENE DOES NOT PRESENT AN ISSUE OF IMPERATIVE PUBLIC IMPORTANCE AND DOES NOT CONFLICT WITH ANY PRIOR DECISION OF THE UNITED STATES SUPREME COURT.

It is a fundamental responsibility of municipal and state governments to protect citizens from the actions of law breakers which endager public safety. One method of advancing this responsibility is through enactment of laws that make it a crime to obstruct police officers who are attempting to apprehend criminals. The purposes of these laws are to not only maintain and protect the safety of the general public and the police officers, but also protect the safety of the person committing the obstruction. For instance, in this case the Petitioner could well have been shot and seriously injured or killed as a result of his interference at the scene of the arrest. The Troy ordinance is tailored to prohibit conduct which obstructs police officers and not speech or "verbal interruptions." The Troy ordinance is comparable to the disorderly conduct statute upheld against a facial challenge in *Colten v. Kentucky*,

407 U.S. 104 (1972). In *Colten*, this Court recognized the strong governmental interest in law enforcement and affirmed a conviction under a disorderly conduct ordinance and dismissed the First Amendment violation claims. This Court held that "the state has a legitimate interest in enforcing its traffic laws and its officers were entitled to enforce them free from possible interference or interruption from bystanders, even those claiming a third party interest in the transaction." *Id.* at 109.

Conduct which obstructs police officers in the performance of their duties unquestionably poses a threat to not only public safety, and the safety of the officers, but also to the safety of the person perpetrating the obstruction. Although, this is not a First Amendment case where speech is being prohibited or limited, speech may be regulated if the regulation is within the constitutional power of the government, if it furthers a significant governmental interest, if it is not based on content of speech, and if it leaves open alternative forms for communication. *Clark v. Community for Creative Nonviolence*, 468 U.S. 288, 297-99 (1984).

As applied to Petitioner's conduct, the Troy ordinance is clearly constitutionally permissible. First, a municipal police power is broad enough to encompass an ordinance prohibiting the obstruction of a police officer during the lawful discharge of the officer's duties. *Berman v. Parker*, 348 U.S. 26, 32-33 (1954); *Noble State Bank v. Haskel*, 219 U.S. 104, 111 (1911). Second, the Troy ordinance does not forbid or suppress a particular message. It is content neutral, and regulates conduct that obstructs police officers in the discharge of their duties. Petitioner's conduct in this case is not "speech." Nor can it be legitimately interpreted that the ordinance is aimed at "speech" or "verbal interruptions" which was repugnant to this Court in *City of Houston, Texas v. Hill, supra*. Petitioner

was going to get his photographs regardless of the consequences. Petitioner's conduct was intended to unlawfully obstruct police officers in making an arrest. Petitioner was charged with knowingly and wilfully obstructing the police officers. The jury was instructed and found that Petitioner must have intended to obstruct in order to be found guilty. Petitioner's criminal conduct cannot be construed as speech. Even if his conduct could reasonably be construed to be speech, it would be conduct escalating into potential violence, therefore, even if it has a verbal element, that "does not bring with it constitutional protection." *Cox v. Louisiana*, 379 U.S. 559, 564 (1965).

Troy's ordinance has been narrowly drawn to advance the important governmental interest in law enforcement. The ordinance prohibits obstruction of police officers attempting to make arrests where such obstruction creates unwarranted danger. The ordinance does not prevent Petitioner or anyone else from expressing their opposition to the actions of the Troy Police Department. The ordinance is not aimed at nor can it be legitimately construed as aiming at constitutionally protected speech.

A. The Troy Ordinance Is Not Unconstitutionally Overbroad.

The due process clause of the Fourteenth Amendment to the Constitution of the United States requires that a municipal ordinance must be definite and certain in its statement of prohibited conduct to enable a person of ordinary intelligence who reads the ordinance to understand what activity is prohibited and govern his actions accordingly. *Grayned v. Rockford*, 408 U.S. 104, 107 (1972); *Papachristou v. Jacksonville*, 405 U.S. 156, 161 (1972).

Before the Petitioner may attack the validity of the Troy ordinance, he must establish that he has standing. Standing exists where the law as applied to the Petitioner is unconstitutional. Standing does not exist where the grounds for challenge are that the law as applied to others or in other situations may be unconstitutional. *Valley Forge Christian College v. Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 474 (1982); *Warth v. Seldin*, 422 U.S. 490, 499 (1975).

There is a limited rule that provides an exception to the general rule of standing where a law is challenged on the grounds that it is unconstitutionally overbroad. Persons may challenge a statute as overbroad "not because their own rights of free expression are violated, but because of a judicial prediction or assumption that the statute's very existence may cause others not before the court to refrain from constitutionally protected speech or expression." *Broadrick v. Oklahoma*, 413 U.S. 601, 612 (1973). See also *Secretary of State v. Maryland v. Joseph H. Munson, Co.*, 467 U.S. 947 (1984); *Dombrowski v. Pfister*, 380 U.S. 479, 486-87 (1965). However, this case is not a speech or "verbal interruption" case such as this Court was confronted with in *Houston v. Hill, supra*. Petitioner's conduct was not speech or verbal exprression. The ordinance does not prohibit verbal expression or verbal interruption. Petitioner has not alleged nor is there any evidence that Troy has ever applied the ordinance at issue to cases of verbal interruption or verbal expression. This is directly contrary to the facts in *Hill*. 96 L.Ed.2d at 409.

Even if Petitioner was properly before this Court, his attack on the Troy ordinance as being overbroad must fail. This Court has been historically and properly concerned with the limited exception to the general standing requirement because of the potentially unnecessary federal court interference with local and state laws. As a result, this Court has significantly

diminished the effect and application of the overbreadth doctrine as a means of constitutionally invalidating statutes. A statute or ordinance may not be invalidated as unconstitutionally overbroad unless its chilling effect on protected expression "is not only . . . real, but *substantial* as well, judged in relation to the statute's plainly legitimate sweep." *Broadrick*, 413 U.S. at 615 (emphasis added); *Erznoznik v. City of Jacksonville*, 422 U.S. 205, 216 (19075). Therefore, an overbreadth facial challenge fails unless the challenged law prohibits a substantial amount of constitutionally protected conduct. *Village of Hoffman Estates v. Flipside, Hoffman Estates, Inc.*, 455 US. 489, 494 (1982). It is almost always possible to conceive or imagine situations in which some innocent activity may fall within the reach of any ordinance. Petitioner claims that such imagined situations in this case make the Troy ordinance overbroad. However, this Court has never held that a law is substantially overbroad simply because it is possible to fashion speculative situations where the ordinance could have an unconstitutional application. In fact, this Court has held directly to the contrary:

> It is clear, however, that the mere fact that one can conceive of some impermissible application of a statute is not sufficient to render it susceptible to an overbreadth challenge . . . In short, there must be a realistic danger that the statute itself will significantly compromise recognized First Amendment protection of parties not before the Court for it to be facially challenged on overbreadth grounds. *Members of the City Council v. Taxpayers for Vincent*, 466 U.S. 789, 800-01 (1984).

The Troy ordinance does not chill or limit in any substantial way freedom of expression nor can it fairly be interpreted to do so. The goal and effect of the ordinance is to protect public safety, the safety of police officers, and the safety of the per-

son obstructing the police in the performance of their duties by prohibiting *conduct* which constitutes obstruction such as that exhibited by Petitioner in this case. The ordinance is directed at intentional criminal conduct and "reflects legitimate state interest in maintaining comprehensive controls over harmful, constitutionally unprotected conduct." *Broadrick*, 413 U.S. at 615. Certainly, Petitioner cannot seriously suggest that taking photographs in the direct line of police fire is constitutionally protected conduct. Rather, it is apparent that Petitioner is trying to bootstrap himself to *Hill* by alleging that hypothetical First Amendment rights were violated in this case. Such conduct by Petitioner, which threatens the physical danger of police officers, the public and the Petitioner himself, does not rise to the level of conduct protected by the First Amendment under any conceivable rationale.

This Court has recognized that, "even if there are marginal applications in which a statute would infringe on First Amendment values, facial invalidation is inappropriate if the 'remainder of the statute. . . covers a whole range of easily identifiable and constitutionally proscribable . . . conduct.' " *Parker v. Levy*, 417 U.S. 733, 760 (1974), quoted in *New York v. Ferber*, 458 U.S. 747, 771 note 25 (1982). The overbreadth doctrine should be applied "sparingly" and "as a last resort" because it is "manifestly strong medicine." *Broadrick*, 413 U.S. at 613. There is no basis in fact to construe that Troy's ordinance be applied to cases involving verbal expression or verbal interruption. Even if the ordinance could be construed as applying in certain hypothetical expression situations, permissible applications of the ordinance would represent only a small fraction of the conduct within the ordinance's reach. Thus, such contrived or imagined overbreadth could not be considered substantial.

The requirement that the overbreadth be substantial is be-

cause few criminal laws would survive judicial scrutiny if they could be invalidated because of the remote possibility that they might, as applied to a contrived or imagined set of facts, prohibit innocent activity. In the present case, Troy's ordinance reaches a broad range of constitutionally proscribable conduct such as exhibited by the Petitioner in this case. Due process does not require impossible standards. All that is necessary is that the language convey a sufficiently definite warning as to the proscribed conduct when measured by common knowledge and practice. As this Court has stated:

> Although such laws, if too broadly worded, may deter protected speech to some unknown extent, there comes a point where that effect — at best a prediction — cannot, with confidence, justify invalidating a statute on its face and so prohibiting a State from enforcing the statute against conduct that is admittedly within its power to proscribe. *Broadrick*, 413 U.S. at 615.

Particularly appropriate is this Court's observation in *Smith v. Goguen*, 415 U.S. 566, 581 (1974):

> There are areas of human conduct where, by the nature of problems presented, the legislature simply cannot establish standards with great precision. Control of the broad range of disorderly conduct that may inhibit a policeman in the performance of his official duties may be one such area requiring as it does an on-the-spot assessment of the need to keep order.

The City of Troy, in the valid exercise of its municipal police powers, has attempted to prohibit the conduct of the Petitioner and others that obstruct police officers in the clear discharge and performance of their duties. Petitioner's conduct in recklessly pursuing a police chase and running into the

direct line of fire of police officers attempting to arrest a fleeing felon is not constitutionally protected. The fact that the Petitioner may contrive or imagine applications of the Troy ordinance that may reach protected conduct is insignificant in light of the vast amount of constitutionally unprotected conduct within the legitimate reach of the ordinance. Petitioner's claim that the ordinance is substantially overbroad must fail.

B. Even Assuming That The Troy Ordinance Is Overbroad, This Court Should Not Invalidate An Ordinance On The Basis of Overbreadth When A Reasonable Limiting Construction Was Used Or Is Available.

The overbreadth doctrine may not be used to invalidate the whole ordinance if "a limiting construction has been or could be placed on the challenged statute." *Broadrick v. Oklahoma*, 413 U.S. 601, 613 (1973). In this case a limiting construction on the ordinance was applied by the City of Troy in charging that Petitioner knowingly and wilfully violated the ordinance at issue, and by the trial court judge who instructed the jury that Petitioner had to intend to violate the ordinance in order to be found guilty. See also *Young v. American Mini Theaters, Inc.*, 427 U.S. 50, 60 (1976).

This Court refused to limit construction of the Houston ordinance to physical acts because of pre-emption by state law. *Houston v. Hill*, 96 L.Ed.2d at 416. No such pre-emption exists in this case, and if this Court believes the limiting construction that was applied to be deficient, the ordinance can be construed to apply only to physical acts. There is no evidence that the City of Troy has applied the ordinance to verbal expression.

Finally, the petition fails to bring to this Court's attention

that this Court denied certiorari involving a nearly identical Ohio ordinance. In *Cincinnati v. Hoffman*, 31 Oh. St. 2d 163; 285 N.E. 2d 714 (1972), *cert. den.* 410 U.S. 920, 93 S.Ct. 1370, 35 L.Ed.2d 583 (1973), the defendant was charged with violating an ordinance that provided:

> No person shall resist, hinder, obstruct or abuse any police officer while such officer is engaged in the lawful performance of his duties. 285 N.E. 2d at 719.

The defendant claimed that the ordinance was vague and in conflict with Ohio law because the Ohio state statute read, "No person shall knowingly and wilfully . . ." whereas the ordinance did not specifically state "knowingly and wilfully." *Id.* at 719.

The Ohio Supreme Court held that the ordinance as reasonably construed neither prohibited any lawful exercise of any constitutional right nor escaped the understanding of any person of common intelligence. The Ohio court determined that the city ordinance was not unconstitutionally vague. *Id.* at 719. The *Hoffman* court also determined that the ordinance did not conflict with state law. The court found:

> ". . . In the instant case, however, 901-2 did not stand solely on its own terms. At the close of the trial of this cause, both in a special charge and in the general charge, the jury was explicitly admonished by the trial judge to inject the revised code scienter standards into their deliberations on the question of liability under the Cincinnati ordinance." . . . *Id.* at 719.

Even assuming that this Court agrees that Troy's ordinance impinges on constitutionally protected activity, a suitable limiting construction was applied. If there was a constitutional defect in the ordinance, that defect was cured by the limiting

construction placed on the ordinance by the City of Troy and by the trial court judge.

Verbal expression or verbal interruptions and legitimate protests of police actions are not proscribed by the Troy ordinance. Limiting constructions that were applied or could be applied such as limiting application to physical acts would alleviate any imagined concerns that the ordinance is reaching constitutionally protected activity. Therefore, this Court need not apply the "manifestly strong medicine" of determining that Troy's ordinance is fatally overbroad.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that this Court deny certiorari and uphold Respondent's ordinance as a constitutionally valid criminal conduct regulation which serves important local government interests.

Respectfully submitted,

CITY OF TROY
DEPARTMENT OF LAW

By: _____

John J. Martin, III
Counsel of Record
500 W. Big Beaver Road
Troy, Michigan 48084
(313) 524-3320
Attorney for Respondents

February 21, 1989

APPENDIX

Q Um-hum.

A — and numerous police officers around, guns drawn. Of course, in a case like that, they don't know if a guy's going to come out shooting, or not.

Q Did you see anyone else involved in —

A I saw a photographer come running up. A photographer was right in the middle of the police, while they were trying to subdue the person that they had taken out of the car.

Q He was right in the middle?

A He was right — If somebody had been shooting down there, the guy'd of got shot.